

such a combination is impermissible because McIntyre teaches away from Appellants' claimed invention. Specifically, McIntyre discloses that advertisers are not to be directly contacted, thereby inhibiting receiving any consumer feedback. For at least the above reasons, it is respectfully submitted that independent claims 33 and 67 are allowable over the combination of Guyett and McIntyre. Likewise, claims 34-49 and 64-66 depend from claim 33 and claims 68-70 depend from claim 67 are also allowable for at least the same reasons.

The second appealed ground of rejection is premised on the assertion that claims 38-41 and 43 are allegedly unpatentable over Guyett in view of McIntyre, in further view of U.S. Patent No. 5,679,075 to Forrest ("Forrest"). Specifically, the Examiner asserts that as to independent claims 33 and 67, Guyett discloses all the limitations but for "generating a statistical report and sending it to the commercial entity."³ Nonetheless, the Examiner asserts that McIntyre discloses these missing limitations. The additional limitations of claims 38-41 and 43, however, require providing a subsequent puzzle from a plurality of puzzles based on consumer performance, which the Examiner agrees is not disclosed by either Guyett or McIntyre. Nevertheless, the Examiner concludes that Forrest discloses this missing limitation, as well as the fact that it would have been obvious to one skilled in the art to combine Guyett with McIntyre and with Forrest to practice the steps of Appellants' claims 38-41 and 43. Again, it is the Examiner's position that McIntyre "teaches a statistical report that keeps track of how many times a game is played and the sending of this report to sponsors of the game (Paragraph 0008)."⁴

Appellants disagree with the Examiner as to what McIntyre discloses. In Appellants view, the combination of Guyette and McIntyre fails to disclose: (a) generating a statistical report from the data [associated with the consumer's interactions with the present interactive advertising message/computerized game]; or (b) providing the statistical report to the commercial entity. Forrest also fails to disclose these limitations. Thus, presuming only for arguments sake that the combination of these three references is permissible, the combination fails to disclose each and every one of the limitations of claims 38-41 and 43. Even if it is determined that Guyett in combination

³ September 6, 2006 Office action, p. 7.

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